



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/172033

PRELIMINARY RECITALS

Pursuant to a petition filed February 15, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on April 19, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the petitioner timely appealed her monthly FS allotment effective November 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County. She is an elderly, blind, or disabled household.
2. The petitioner's monthly income for the determination of her FoodShare (FS) benefits in November 2015 was \$1,405.21. This consists of \$104.21 from her [REDACTED] pension and

1301.00 from social security. Effective November 1, 2015 the petitioner began receiving an additional \$155.88 from a [REDACTED] pension. She would have had 10 days to report this change, and the change would have impacted her FS benefits effective December 1, 2015.

3. The petitioner's monthly rent is \$890. She is also pays for a telephone. She has \$69.90 in excess medical expenses.
4. On October 5, 2015 the agency sent the petitioner a notice stating that effective November 1, 2015 she would receive \$16 in monthly FS benefits.
5. On February 15, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

An appeal of a negative action concerning FS must be filed within 90 days of the negative action, once timely and adequate notice is given to the household. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code §HA 3.05(3)(b). Failure to appeal within the 90-day limit means that the Division of Hearings and Appeals does not have jurisdiction to consider the merits of the appeal.

In this case the petitioner had until February 1, 2016 to appeal her \$16 FS allotment effective November 1, 2015. The Division of Hearings and Appeals did not receive the petitioner's appeal until February 15, 2016. This is beyond the statutory deadline, and I am without jurisdiction to decide this case on the merits.

Although I am without jurisdiction, I reviewed the calculation of the petitioner's FS benefits, and the calculation is correct. In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

The petitioner argued that her pension payments should be included as income. Although this argument is incorrect, the petitioner would only be entitled to \$16 in monthly FS benefits even if the agency disregarded the pension income. The petitioner testified that the pension payments were defined benefit plans, and thus excluded as income from the FS program. This is a mischaracterization of her pension income and a misreading of the FS rules and regulations. The [REDACTED] pension states that it is a "single life annuity." The [REDACTED] letter states that the petitioner receives pension payments in the amount of \$104.21 each month. Under the FS policy, the agency must count annuity payments and pension payments as unearned income. *FSWH*, 4.3.4.2. In addition, the petitioner's monthly FS allotment is \$16 regardless of whether the agency counts these pension payments. With just the petitioner's social security income and current expenses, she is still only eligible for \$16 in monthly FS benefits. Thus, the agency determination of the petitioner's monthly FS allotment is correct.

CONCLUSIONS OF LAW

The petitioner did not timely appeal her monthly FS allotment effective November 1, 2015, and I am without jurisdiction to decide this case on the merits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 5, 2016.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability